IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5536 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ZINABHAI KANTILAL RATHOD

Versus

UNION OF INDIA

Appearance:

MR TR MISHRA for Petitioner

MR BB NAIK for Respondent No. 1

MR RAJNI H MEHTA for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 16/02/2001

ORAL JUDGEMENT

In this petition, which is filed under Article 226 of the Constitution, the petitioner has prayed to issue a writ of certiorari or any other appropriate writ,

order or direction to quash and set aside order dated May 25, 1988 passed by the Government of India refusing to refer the dispute regarding illegal termination of services of the petitioner for adjudication, to appropriate Tribunal.

2. The petitioner was initially employed in December, 1986 with Sabarmati Project of Oil and Natural Gas Commission and his name was shown on the muster roll at serial nos. 131, 147 and 151 between the period from December 31, 1986 to February 28, 1987. It is asserted by the petitioner that from March 1, 1987 to July 22, 1987, he worked as a daily wager and used to receive salary every week. The petitioner claims that between December, 1986 and February 28, 1987, he worked as contingent labour and was paid salary on monthly basis. On July 22, 1987, the petitioner was appointed as contract employee and was to be paid a sum of Rs.39/per day as wages. The last order is produced by the petitioner at Annexure-B to the petition. According to the petitioner, his signature was obtained on a stamp paper of Rs.10/- on July 23, 1987 pursuant to order dated July 22, 1987, which is produced at Annexure-B to the petition. The petitioner has claimed that his services were terminated by respondent no.2 - Commission on October 31, 1987 without assigning any reason. Aggrieved by the impugned action of respondent no.2 - Commission, the petitioner raised an industrial dispute before the Conciliation Officer and Assistant Labour Commissioner (Central). The Conciliation Officer held conciliation proceedings and submitted failure report to the Government. The failure report submitted by the Conciliation Officer is produced by the petitioner at Annexure-D to the petition. The failure report was considered by the Government and the Government rejected the prayer of the petitioner vide order dated May 25, 1988, to refer the dispute regarding illegal termination of his services to the Tribunal for adjudication on the ground that the petitioner had not completed 240 days of service and was, therefore, not entitled to any relief. The order passed by the Central Government is produced by the petitioner at Annexure-A to the petition. The petitioner has claimed in the petition that the Government has no power to decide on merits of the dispute and decision dated May 25, 1988 rendered by the Central Government refusing to refer the dispute for adjudication to the Tribunal is illegal. Under the circumstances, the petitioner has filed present petition and claimed relief to which reference is made earlier.

3. Though duly served, none of the respondents has

filed reply affidavit controverting the averments made in the petition.

4. Mr. T.R.Mishra, learned counsel for the petitioner submitted that the Government has no power to decide on merits of the dispute and, therefore, the impugned order should be quashed. The learned counsel pleaded that the demand raised by the petitioner could have been adjudicated in a reference only by the Tribunal and it was not open to the Government to refuse to refer the dispute for adjudication to the Tribunal on the ground that the petitioner had not put in 240 days of service and was not entitled to any relief. In support of his submissions, the learned counsel placed reliance on the decisions of the Supreme Court in (1) DHANBAD COLLIERY KARAMCHARI SANGH v. UNION OF INDIA AND OTHERS, 1991 Supp.(2) S.C.C. 10, and (2) TELCO CONVOY DRIVERS MAZDOOR SANGH AND ANOTHER v. STATE OF BIHAR AND OTHERS, AIR 1989 SC 1565.

5. Mr. Rajani H. Mehta, learned counsel for the respondent no.2 submitted that the Government, after taking into consideration the failure report, has concluded that the petitioner had not put in 240 days of service and, therefore, the dispute was not required to be referred to the Tribunal for adjudication and as the appropriate Government is entitled to prima-facie consider the merits of the dispute, the relief claimed in the petition should not be granted. In support of his submission, the learned counsel placed reliance on the decision of the Supreme Court in SECRETARY, INDIAN TEA ASSOCIATION v. AJIT KUMAR BARAT AND OTHERS, (2000)3 SCC 93.

6. I have heard the learned counsel for the parties and taken into consideration the documents forming part of the petition. From the impugned order, it is evident that the appropriate Government has refused to make reference of the dispute for adjudication on the ground that the petitioner had not put in 240 days of service and was, therefore, not entitled to any relief. While considering the scope of section 10(1) of the Industrial Disputes Act, 1947, the Supreme Court in Telco Convoy Drivers Mazdoor Sangh and another (supra) has held that the Government while considering the question whether reference should be made or not cannot delve into merits of the dispute and determine the lis itself. Explaining the scope of section 10(1) of the Act, the Supreme Court has held that while exercising power under section 10(1), the function of the appropriate Government is an administrative function and not a judicial or quasi

judicial function, and that in performing this administrative function,the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by Section 10. After holding that in considering the question of making a reference under section 10(1), the Government is entitled to form an opinion as to whether an industrial dispute exists or is apprehended, what is emphasized therein is that formation as to whether an industrial dispute exists or is apprehended, is not the same thing as to adjudicate the dispute itself on its merits. In the case before the Supreme Court, the dispute was whether the persons raising the dispute were workmen or not and the Supreme Court has held that, that question could not have been decided by the Government in exercise of its administrative function under section 10(1) of the Act. Again, in Dhanbad Colliery Karamchari Sangh (supra) while interpreting section 10 of the Industrial Disputes Act, 1947, the Supreme Court has held that Government cannot itself decide the dispute on merits. In the said case, the workmen had claimed that they were not contract labour, but direct employees of the principal employer and the Government had refused to refer the dispute on the ground that the Union failed to establish that the workmen were engaged in prohibited categories under the Contract Labour (Regulation and Abolition) Act, 1970 and that the workmen were engaged by the contractor and not by the principal employer, there being no employer-employee relationship between them. The Supreme Court while directing the Government to refer the dispute to the appropriate Industrial Court for adjudication, has held that the Government itself could not have decided the dispute which was sought to be raised and had exceeded its jurisdiction under section 10(1) of the Act. In Secretary, Indian Tea Association (supra), order of the appropriate Government refusing to make reference was under challenge. The appropriate Government had refused to make the reference because prima-facie evidence did not indicate that the employee concerned was a workman. After examining the nature of the said order and scope of judicial review thereof by the High Court, the Supreme Court has held that as the employee had failed to prove prima-facie that he was a workman, direction given by the High Court to the State Government to make a reference was liable to be set aside. In my view, the principle laid down by the Supreme Court in the above quoted decision is not applicable to the facts of the present case. Here in the present case, the claim of the petitioner is that he had put in 240 days of service and, therefore, his services could not have been terminated

without following the provisions of the Industrial Disputes Act, 1947. It is not the case of respondent no.1 that the petitioner was never employed with it. What is sought to be done by the Central Government in the present case is to decide the dispute on merits. Whether the petitioner had put in 240 days of service or not could have been decided only after the petitioner was given an opportunity to lead evidence in the matter and the Government could not have refused to refer the dispute for adjudication on the ground that the petitioner had not put in 240 days of service and was, therefore, not entitled to any relief. Having regard to the principles laid down by the Supreme Court in (1) Dhanbad Colliery Karamchari Sangh (supra), and (2) Telco Convoy Drivers Mazdoor Sangh and another (supra), I am of the view that the impugned order is liable to be set aside.

For the foregoing reasons, the petition succeeds. The order dated May 25, 1988 passed by respondent no.1 refusing to refer the dispute relating to illegal termination of services of the petitioner to the appropriate Tribunal, is hereby set aside and quashed. This is an old matter and, therefore, having regard to the facts of the case, respondent no.1 is directed to make reference to the appropriate Tribunal as early as possibly and preferably within two months from the date of receipt of writ. Rule is made absolute accordingly, with no order as to costs.

(J.M.Panchal,J.)

(patel)